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Peruvian Court Overturns Terrorism Law

by LADB Staff
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Peru's Tribunal Constitucional (TC) ruled on Jan. 3 that several provisions of the anti-terrorism decrees of former President Alberto Fujimori (1990-2000) are unconstitutional. Following the ruling, President Alejandro Toledo asked Congress for special powers to enact new legislation to prevent terrorists from being freed. The court called the ruling "probably the most important and extensive...in its history, constituting a group of recommendations and mandates of transcendental importance."

The ruling could pave the way for retrials for hundreds of people jailed on terrorism charges during the 1990s, including top leaders of the Movimiento Revolucionario Tupac Amaru (MRTA) and Sendero Luminoso (SL). Peru has about 2,500 people in prison on terrorism charges but has pardoned several hundred who were wrongly imprisoned.

TC president Javier Alva Orlandini said the 60-page ruling brought Peru in compliance with rulings by the Costa Rica-based Inter-American Court of Human Rights (IACHR), legal arm of the Organization of American States (OAS).

The IACHR has directed Peru to reform its anti-terrorism legislation. The ruling was a response to a petition filed by 5,000 people, mostly relatives of people jailed on terrorism charges, calling on the TC to declare four laws unconstitutional. "We have carefully analyzed each of the norms contained within the four legislative decrees. Some clauses and some articles have been declared unconstitutional, and one decree has been thrown out altogether," Alva Orlandini told reporters.

The decree that was struck down allowed suspects to be tried for treason. The court also ruled that accused terrorists must be tried in civil rather than military courts. It found life sentences unconstitutional but did not eliminate them. Instead, it ordered Congress to pass a law calling for a revision of sentences after 30 years served.

"I expect a great deal of debate and criticism, both international and domestic, to follow this ruling," Alva Orlandini said. "No one who has been tried or sentenced will walk free....They will have the possibility of a trial with all guarantees established by the Constitution and by international treaties."

Fujimori defends decrees

Fujimori, who abandoned the country in 2000 amid a corruption scandal and is now in self-imposed exile in Japan, signed the decrees after a self-coup in 1992 in which he temporarily closed Congress. The decrees contributed to giving Peru one of Latin America's worst human rights records. Fujimori defended the laws on his Web site, saying they had been necessary to control the "hell" of guerrilla violence. "All terrorist acts are treason," he said. About 30,000 people died and 7,000 disappeared, victims of rebels or state security forces, in the 1980s and 1990s. "You don't fight terrorism with state

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Fujimori's decrees allowed suspected rebels to be tried by secret military tribunals, often presided over by judges wearing hoods or hidden behind one-way glass. The government justified the measure as a way to protect magistrates from reprisals. However, abuses under the system were widespread, with some verdicts being written before the accused even appeared in court. Initially, many Peruvians supported the measures, willing to set aside concerns about the rights of the accused to stem the guerrilla violence. But the measures drew international criticism for their secrecy and lack of due process.

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Meanwhile, on Jan. 7, a Peruvian criminal court refused to grant a new trial to Oscar Ramirez Durand, a former Sendero Luminoso commander, who is serving a life sentence on terrorism charges. Ramirez Durand petitioned for a new trial in a civil court, arguing that his right to due

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process was violated in his military trial four years ago. Although large numbers of requests for more retrials are expected, experts doubted the case of US citizen Lori Berenson, serving a 20-year sentence in Peru on terrorism charges, would be among them (see NotiSur, 2001-06-29). Berenson was sentenced to life in prison by a military court in 1996, but her conviction was overturned in 2000.

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A civilian retrial last year sentenced her to 20 years for the lesser crime of terrorist collaboration. The law under which she was convicted at that trial has not been thrown out, although the court challenged some aspects of it. Berenson's case is currently before the IACHR in Costa Rica. "It would seem that [the ruling] does not modify in any way Lori Berenson's situation, but, in any case, her lawyer and the San Jose court can study the sentence to see whether it can apply to them," said Alva Orlandini. In New York, Berenson's parents called the ruling "a grossly inadequate first step that fails to address the many criticisms of the anti-terrorism laws by the Inter-American Court, the OAS' Inter-American Commission on Human Rights, and other human rights groups."

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President gets special powers to fix anti-terrorism laws

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On Jan. 6, supporters of Fujimori demonstrated against the court decision. Suspended deputy Carmen Lozada said the ruling "has created judicial chaos and the convicted terrorists feel strengthened." President Alejandro Toledo said that "the TC ruling does not open the doors and windows of the prisons to let the terrorists out into the streets." He also said the IACHR had not called for the release of subversives, but rather that those sentenced in military courts be retried. Promising to respect the autonomy of the courts, Toledo said he would invite legal and other experts to join a board that will oversee the legal process of re-examining cases.

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On Jan. 7, Toledo promised the families of 69 campesinos assassinated by Sendero Luminoso in April 1983 that those responsible would never leave prison. Toledo said those who ordered the massacre in Lucanamarca, a remote area in the department of Ayacucho, would remain behind bars. The bodies of the Lucanamarca victims, which included 20 children, were exhumed from a common grave in November 2002 and identified through the work of the Truth Commission, the Public Ministry, the Defensoria del Pueblo, and the Coordinadora Nacional de Derechos Humanos (CNDDHH). The remains were returned to Lucanamarca for burial. Toledo traveled to the area for the ceremony.

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